



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/152760

PRELIMINARY RECITALS

Pursuant to a petition filed October 14, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on November 21, 2013, at West Bend, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's Long-Term Care Medicaid (Family Care) application based on a divestment of real property and whether the agency properly determined a divestment penalty period of 127 days.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Ken Benedum

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.

2. On August 5, 2013, an application for long-term care Medicaid (Family Care) was submitted on the Petitioner's behalf.
3. On February 24, 2012, the Petitioner's condo was sold for \$90,000 to her daughter.
4. The fair market value of the condo on the 2012 property tax bill was \$121,000.
5. On September 5, 2013, the agency denied the Petitioner's application finding a divestment of \$31,000 occurred (\$121,000 - \$90,000) and imposing a divestment penalty of 127 days (from August 8, 2013 – December 9, 2013).

DISCUSSION

A person cannot receive institutional medical assistance if her assets exceed \$2,000. See Wis. Stat. §§ 49.46(1) and 49.47(4). Generally, a person cannot reach this limit by divesting assets, which occurs if she or someone acting on her behalf "disposes of resources at less than fair market value" within five years of the later of when they were institutionalized or applied for medical assistance. Wis. Adm. Code, § DHS 103.065(4)(a); Wis. Stat. § 49.453(1)(f). If the person improperly divests her assets, she is ineligible for institutional medical assistance for the number of months obtained by dividing the amount given away by the statewide average monthly cost to a private pay patient in a nursing home at the time he applied. Wis. Adm. Code, § DHS 103.065(5)(b). Beginning on January 1, 2009, county agencies were instructed to use the average daily cost of care and determine ineligibility to the day rather than to the month. The daily amount is currently \$243.49 Medicaid Eligibility Handbook, § 17.5.2.2. A divestment does not bar eligibility under the following circumstances found in Wis. Adm. Code, § 103.065(4)(d)2:

- a. The individual intended to dispose of the resource either at fair market value or for other valuable consideration;
- b. The resource was transferred exclusively for some purpose other than to become eligible for MA;
- c. The ownership of the divested property was returned to the individual who originally disposed of it; or
- d. The denial or termination of eligibility would work an undue hardship. In this subparagraph, "undue hardship" means that a serious impairment to the institutionalized individual's immediate health status exists.

In this case, the agency maintains that the Petitioner divested a portion of the value of her residence when she sold it in February, 2012 to her daughter for \$90,000. Initially, the agency assigned the assessed value of the property as its correct fair market value. This a typical, neutral method used by county agencies throughout the state to initially arrive at a piece of real property's value.

However, the Petitioner's power of attorney, her son, produced evidence at the hearing to rebut the agency's position. Specifically, the Petitioner's son testified that the property was not sold with an intent to become eligible for MA. Further, he argued that the assessed value and the fair market value are not the same. He testified that the condo is part of a 4 building complex with 8 units in each building. He produced information regarding the sales of other similar condos in the complex. Specifically on June 27, 2011 a similar condo in the complex sold for \$85,000. He produced evidence of a listing of another similar condo which indicates the condo being listed in April 2010 for \$124,900, removed from the market, then re-listed in June, 2012 for \$73,500 and in October, 2012 for \$69,900 before being removed again from the market in August, 2013 without selling. He produced evidence of current listings of similar condos in the complex: one condo is in foreclosure and listed at \$84,900, another is listed at \$82,500 and another that has been recently remodeled is listed at \$99,900 (it has been on the market for over 200 days). The Petitioner's son noted that his sister (the purchaser of the Petitioner's condo) could have purchased condos similar to that of the Petitioner for less than she paid the Petitioner.

Based on the evidence, I conclude that there was no divestment of the Petitioner's condo. The Petitioner's daughter purchased the condo from the Petitioner for fair market value based on comparable sales and listings.

CONCLUSIONS OF LAW

The Petitioner's daughter purchased the condo from the Petitioner for fair market value based on comparable sales and listings. There was no divestment based on the sale of the Petitioner's condo.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to review the Petitioner's application for long-term care MA and re-determine eligibility based on the application of August 5, 2013 with no divestment relating to the sale of her condo on February 24, 2012. The agency shall issue a new notice to the Petitioner regarding her eligibility based on the application of August 5, 2013. These actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

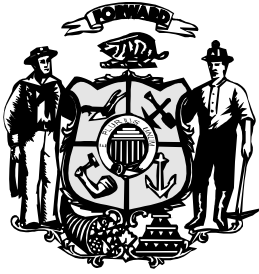
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of January, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 2, 2014.

Washington County Department of Social Services
Division of Health Care Access and Accountability